

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4187 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

KUSUMBEN CHHAGANLAL PATEL

Versus

THE TALUKA DEVELOPMENT OFFICER

Appearance:

MR VIJAY H PATEL for Petitioner
M/S PURNANAND & CO for Respondent No. 1
MR DC DAVE for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 16/06/2000

ORAL JUDGEMENT

#. The petitioner being aggrieved by the order made by the District Development Officer, District Panchayat, Valsad on 1.7.85 has preferred this petition invoking writ jurisdiction of this Court under Article 226 of the

Constitution of India. Short facts that emerge from the contentions raised in the petition are as under.

#. The petitioner was appointed as work-charge clerk by an order dated 7.8.80 vide Annexure : A. Reading the order, it is very clear that the appointment was purely temporary and was liable to be terminated at anytime. Annexure : A, the order of appointment is made by the Taluka Development Officer, Pardi. It is contended by the petitioner that after the period of 4 and a half years, the Taluka Development Officer, by his order dated 30th April, 1985 passed an order at annexure : B whereby the services of the petitioner were terminated on the ground that the Taluka Panchayat Officer was not authorized to appoint Work-charge employees. The petitioner has contended that even though the initial appointment was without jurisdiction, the services could not have been terminated in this fashion. It appears that the petitioner approached the appellate authority against the order of dismissal. The appellate authority appears to have considered the provisions contained in rules known as Gujarat Panchayat Service (Qualification & Recruitment) Rules, 1967 (hereinafter to be referred to as "the Rules"), made in exercise of powers conferred by section 323 of the Gujarat Panchayats Act, 1961 (hereinafter to be referred to as "the Act"). The appellate authority has relied on sections 122 and 123 of the Act. Section 123 is required to be perused and the relevant part of section 123 is as under.

"123.

(1) Save as otherwise expressly provided by or under this Act, the executive power of a taluka panchayat for the purpose of carrying out the provisions of this Act, shall vest in the Taluka Development Officer who shall subject to the orders, if any, of the President or of the taluka panchayat, as the case may be --

- (a) xxxxxxx xxxxxxx xxxxxxx
- (b) xxxxxxx xxxxxxx xxxxxxx

(2) Subject to the provisions of this Act and the rules made thereunder the Taluka Development Officer --

- (a) xxxxxxx xxxxxxx xxxxxxx
- (b) xxxxxxx xxxxxxx xxxxxxx

(c) shall appoint such class of officers and servants as may be prescribed;

xxxxxxx xxxxxxxx xxxxxxx

The appellate authority pointed out that even as per notification dated 2.1.67, the Taluka Development Officer was empowered to appoint persons working in Class IV. The appellate authority has pointed out that in view of the resolution no. PWD 1970-67871-(36) - C, dated 28.2.77, the Work-charge Clerk could have been appointed by Executive Engineer. In this view of the matter, the appellate authority rejected the contention raised by the petitioner and dismissed the appeal. It is against this order that the present Special Civil Application is preferred. On 12.3.86, before the learned Single Judge, it was made clear that the petitioner has been discharged from the services. The learned Single Judge, however, directed that on the next available vacancy, the petitioner may be given first priority on temporary basis subject to the result of the petition. Nothing is placed before this Court as to whether the petitioner has been given appointment thereafter or not and if given, whether the petitioner is continued in services or not.

#. Rules provide two types of services namely ; (i) superior panchayat service and (ii) inferior panchayat service. Vide Rule 3 of the Rules, there is a schedule of classification which is annexed to Rules and one will have to refer to this schedule to find out whether the petitioner was in inferior panchayat service or in superior panchayat service. Rule 9 provides procedure to be followed with regard to appointment to the post in panchayat service. Section 9 (1) & (2) reads as under :-

"9. Procedure to be followed in regard to appointment to posts in Panchayat Service.-- (1) Except in the case of services and post which are not within the purview of the Board or the Selection Committee, recruitment and appointment to all posts shall be made by the appointing authority after consultation with the Board or Selection Committee, as the case may be, either by direct selection, or by promotion from a lower post or service, or by transfer from the State Service to the Panchayat Service, or by reemployment or by deputation.

(2) For the purpose of selecting candidates

by direct selection for appointment to posts mentioned in Schedule IV or with a view to selecting candidates for pre-service training prior to their appointment to such posts, the Board or, as the case may be the selection Committee shall arrange to hold qualifying written examinations, if prescribed."

It is required to be noted that in public service, no one can be appointed by back-door entry. When a person is to be appointed in public service, he must be appointed in accordance with the rules. There must be a procedure by which the opportunities will have to be given to persons eligible to contest by way of a test. The authority will be in a position to select better candidates. By back-door entry as found in the present case, people are being taken in service, as a result of which the persons who are otherwise entitled to compete are deprived of their right.

#. In case of a necessity, if a person is appointed on ad hoc basis for a temporary period, he would not get a permanent right but at the same time, it becomes the duty of the officer to recommend to the higher officer to see that the persons duly qualified are appointed. It is thereafter, the competent authority would know about vacancy and would follow the procedure for appointment of a person in accordance with law. It is for the appointing authority to follow the procedure for selection for getting better candidates. By number of decisions, the executives are not only informed but in several cases directed that they should not continue the persons on ad hoc basis for a longer period. If there is need then they should see that the person is appointed through proper channel and in accordance with law. For the reasons best known to the Taluka Development Officer he has appointed the petitioner without following the procedure and the State Government has not taken any action against him. The appellate officer has pointed out that the appointment was in contravention of the provisions of the Act and the Rules. Therefore, the appeal was rightly dismissed. It is also pointed out that it was not within the powers of the Taluka Development Officer to make appointments on the post on which the petitioner was appointed. In view of the provision contained in the Rules and Act, I find no merits in the matter and the petition stands dismissed. Rule is discharged with no order as to costs.

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